

**IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division**

**In re: Tracey Marlene Winckler
Debtor**

**Case No. 17-32368-KRH
Chapter 13**

Address: 10180 Purcell Road
Henrico, VA 23228

Last four digits of Social Security No: xxx-xx-7980 (Debtor)

NOTICE OF OBJECTION TO CLAIM

The above named Debtor has filed an Objection to Claim in this bankruptcy case.

Your claim may be reduced, modified or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the Court to eliminate or change your claims, then no later than 30 days from the date of this notice, you or your attorney must:

File with the Court a written response to the objection, explaining your position, at:

Clerk of Court
United States Bankruptcy Court
701 E. Broad Street, Room 4000
Richmond, VA 23219

If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

You must also send a copy to:

Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588

Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtors

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Dated: December 12, 2017

BOLEMAN LAW FIRM, P.C.
Counsel for Debtor

By: /s/ Mark C. Leffler
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtors

CERTIFICATE OF SERVICE

I certify that on December 12, 2017 a copy of the foregoing has been sent to the Chapter 13 Trustee via the Court's CM/ECF system and mailed via first class mail to the following:

Cavalry SPV I, LLC
c/o Bass & Associates, P.C.
3936 E. Ft. Lowell Road, Suite 200
Tucson, AZ 85712

Tracey M. Winckler
10180 Purcell Road
Henrico, VA 23228

/s/ Mark C. Leffler
Counsel for Debtors

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**Case No. 17-32368-KRH
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OBJECTION TO CLAIM NO. 26-1 AND MEMORANDUM IN SUPPORT

COMES NOW, Tracey M. Winckler, by counsel, and files this Objection to the Proof of Claim (Claim No. 26-1) filed by Cavalry SPV I, LLC, as assignee of Capital One, N.A., pursuant to 11 U.S.C. § 502, Federal Rules of Bankruptcy Procedure 3001, 3007 and 9014, and Local Bankruptcy Rules 3007-1 and 9013-1. In support of her Objection to Claim, Debtor respectfully states the following:

Jurisdiction

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §§1334 and 157 in that this action arises in and relates to the bankruptcy case of the Debtors, a chapter 13 case having been filed in this Court on May 8, 2017.

2. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).

3. Venue is proper pursuant to 28 U.S.C. §1409.

Parties

4. Tracey M. Winckler (the “Debtor”) is the debtor in this case.

5. Respondent Cavalry SPV I, LLC (hereinafter “Cavalry”) is a foreign limited liability company registered with the Virginia State Corporation Commission that filed a proof of claim in the instant case.

Facts

6. Cavalry’s Proof of Claim sets forth its claim as follows: Unsecured in the amount of \$280.01.

7. An attachment to Cavalry’s Proof of Claim form (the “Itemization”) purports to itemize interest, fees, and other charges pursuant to Federal Rule of Bankruptcy Procedure 3001(c)(2)(A), and it sets forth the following information: (1) that the “principal” is \$280.01, (2) “interest” is \$0.00, (3) that “fees” total \$0.00, and (4) that the entity from whom Cavalry purchased the account is Capital One, N.A.

8. Another attachment to Cavalry’s Proof of Claim is a BuyPower Card World Elite Mastercard account statement for the period of April 3, 2017 to May 3, 2017 (the “World Elite Mastercard Statement”). The World Elite Mastercard Statement sets forth the following information: (1) that the previous balance was \$273.30, (2) that the past due amount was \$0.00, (3) that interest charged was \$5.71, and (4) the new balance was \$280.01.

9. Cavalry’s claim relates to a credit contract on which interest and fees were regularly assessed. Debtors assert that Cavalry’s Itemization does not properly, accurately, or truthfully itemize the interest, fees, and other costs embedded in the claim amount, and the World Elite Mastercard Statement does not meet the requirements of Rule 3001(c)(2)(A).

Discussion

10. Pursuant to 11 U.S.C. § 502(a), a claim is “deemed allowed, unless a party in interest . . . objects.”

11. Pursuant to 11 U.S.C. § 502(b)(1), where an objection is made to a claim, the Court “shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that . . . [] such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law”

12. Pursuant to Federal Rules of Bankruptcy Procedure 3001(c)(2)(A), “If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.”

13. Pursuant to Federal Rules of Bankruptcy Procedure 3001(c)(3)(B), “ On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing [upon which the claim is based].”

14. Pursuant to Federal Rules of Bankruptcy Procedure 3001(f), “a proof of claim executed and filed” in accordance with the rules “shall constitute prima facie evidence of the validity and amount of the claim.”

First Objection to Claim

15. Cavalry’s Itemization falsely attests under oath that the claim amount includes only \$0.00 in interest and \$0.00 in other charges. It fails to separately state anything regarding the fee amounts embedded in the claim amount.

16. Debtor is unable to efficiently use the Proof of Claim to determine what part of the amount claimed by Cavalry is attributable to principal, and what amount to interest and fees.

17. Under Federal Rules of Bankruptcy Procedure 3001(c)(2)(D), this Court should preclude Cavalry from presenting any evidence to the contrary of what it has sworn to in its

claim, dismiss Cavalry's claim, and award other appropriate relief, including reasonable expenses and attorneys' fees.

Second Objection to Claim

18. Debtor did not include any debt to Cavalry in her Schedules.

19. Debtor specifically asserts, pursuant to 11 U.S.C. § 502(b)(1) and (9), that Cavalry cannot enforce this debt against her.

20. Debtor affirmatively asserts that Cavalry failed to attach the writing upon which Cavalry's claim is based. Pursuant to Federal Rule of Bankruptcy Procedure 3001(c)(3)(B), the Debtor hereby requests that Cavalry provide her with a copy of the writing upon which the claim is based, or a statement of the circumstances of the loss or destruction of such writing, within 30 days.

WHEREFORE, Debtor respectfully requests that the Court sustain this Objection to Claim, disallow the claim, grant Debtor leave to file a separate Motion seeking appropriate sanctions against Cavalry including the Debtor's reasonable attorney fees and expenses, and order such other and further relief as is just and proper.

Respectfully submitted,
Tracey M. Winckler
By Counsel

By: /s/ Mark C. Leffler
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
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